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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

Nos. ~~1192-1193~~ 97-98

JULIUS A. KRUG, OSCAR L. CHAPMAN, and FRED W. JOHNSON, *Petitioners,*

v.

SANTA FE PACIFIC RAILROAD COMPANY, *Respondent.*

On Petition for Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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OPINIONS BELOW.

The opinion of the District Court (R. 19-24) is reported in 57 F. Supp. 984. The opinion of the United States Court of Appeals for the District of Columbia (R. 53-58) is reported in 153 F.(2d), 305.

JURISDICTION.

The jurisdiction of this court to review the judgment, by certiorari, is under section 240(a) of the Judicial Code, as amended; U. S. Code, Title 28, section 347.

THE QUESTION PRESENTED.

The question presented to and decided by the courts below was whether the rights of the railroad company to "select" certain public lands, *in lieu of other lands which the railroad company had previously reconveyed to the United States* under the Acts of June 22, 1874, and April 28, 1904,—were claims to lands granted "*in aid of the construction of any portion of its railroad*" and therefore within the terms of a certain release executed by the railroad company pursuant to section 321(b), Title III, of the Transportation Act of 1940.

If such selection rights under the Acts of 1874 and 1904 are claims to lands granted *in aid of construction*, they were extinguished by the release. If they are not claims to lands granted in aid of construction, then they are valid selection rights which the Department of the Interior has wrongfully and mistakenly rejected and refused to recognize, solely because of the release.

The District Court held that the Acts of 1874 and 1904 were supplemental to and in legal effect amendatory of the original granting act of July 27, 1866; that the lands to be selected under the Acts of 1874 and 1904 were in substitution for the lands originally granted by the Act of 1866 in aid of construction; that the railroad company's rights to select lieu lands under the Acts of 1874 and 1904 were therefore claims to lands granted in aid of construction and within the scope of and extinguished by the release.

The United States Court of Appeals for the District of Columbia in reversing the District Court, held (1) that the release was a release of further claims to lands granted in aid of construction, and (2) that the selection rights in ques-

tion, under the Acts of 1874 and 1904, were not claims to lands granted in aid of construction.

Both courts assumed jurisdiction and decided the case on the merits.

STATEMENT FOR RESPONDENT IN OPPOSITION TO CERTIORARI.

1. This suit is not—as suggested in the petition for certiorari (page 7)—"an attempt to avoid" the release filed pursuant to the Transportation Act of 1940.

Respondent has given full effect to that release by relinquishing all further claims to approximately 1,500,000 acres granted by the Act of July 27, 1866, and earned by the construction of the railroad, but not patented to respondent. See *Transportation—Information Concerning Land Grants for Roads, Canals, River Improvements, and Railroads*—Information Bulletin, 1939 Series, No. 5 (Government Printing Office: 1940), which shows the status of the Atlantic and Pacific grant as of June 30, 1938, as follows:

GRANTS PRACTICALLY ADJUSTED, BUT NOT CLOSED

Name of railroad	Date of grant	Area of grants in acres	Acres patented	Amount due [in acres]
. . . . .				
Atlantic & Pacific R. R. Co. (Western Division)	July 27, 1866 (14 Stat. 292)	13,423,237.02	11,917,309.83	1,505,927.19
. . . . .				

See also statement issued on March 13, 1941, by the Department of the Interior, Information Service, after the release filed by respondent was approved by the Secretary of Interior, as follows:

> "The claim of the Atchison, Topeka and Santa Fe Railroad Company to approximately 1,400,00 acres of public land in Arizona and New Mexico has been 'cancelled out' after 75 years of railroad land grant negotiations, with the approval of a land grant claim

release submitted by that railroad, Secretary of the Interior Harold L. Ickes announced today.

"The release of the Santa Fe constitutes the second instance in which land is being relinquished to the Government under provisions of the Transportation Act of 1940. The first relinquishment, made by the Southern Pacific Railroad, involved about 2,000,000 acres of public land in Southern California.

"Approval of the release by Secretary Ickes clears the track for the Santa Fe to take advantage of increased rates for certain classes of Government freight and passenger business on mileage of its early land-grant road predecessor, the Atlantic and Pacific Railroad Company, from Isleta, New Mexico, to the Colorado River in Arizona in the vicinity of Needles, California. Under the Transportation Act, railroads originally constructed with the aid of public land may discontinue preferential reduced rates for certain forms of Government traffic if, as and when the roads receive approval by the Secretary of the Interior of a formal release of any claim under such grants.

"One of the factors in the expansion of the nation's transportation network westward to the Pacific, the Atlantic and Pacific Railroad Company was awarded a grant of approximately 13,423,000 acres of the public domain by Congress in 1866, according to General Land Office records. Of this original grant, the railroad received title to approximately 11,917,000 acres from the United States. Claims for the unpatented area of approximately 1,400,000 acres, now have been relinquished by the release submitted by the Santa Fe."

Respondent's position in this suit (which has been sustained by the court below) is that the release has nothing whatever to do with the approval of the selections here in question which are in completion of *exchanges* proposed by the Secretary of the Interior under the Acts of 1874 and 1904 and *partly executed* by respondent's reconveyance to the United States of the base lands sought by the United States.

2. The release executed and filed by respondent (R. 8-9) was specifically a release of any and all claims of whatever

description to lands, etc: "granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or any predecessor in interest *in aid of the construction of any portion of its railroad*".

This was the exact form prescribed by the Secretary of the Interior in General Land Office Circular 1480 (6 F. R. 422) including the words "in aid of the construction of any portion of its railroad"—and was in strict compliance with the statute.

Obviously the words "any act of the Congress" were necessary because the form was prescribed for use by all railroads which had received grants in aid of construction, under many different acts of Congress. This is clear from Section 273.64 of Circular 1480, 6 F. R. 422, which prescribed the form of the release, as follows:

> "273.64. *Form of release.* The release must be substantially in the following form:
>
> "The . . . Railroad (Railway) Company, a corporation organized and existing by virtue of the laws of the State of . . ., with office and principal place of business at . . ., in the state of . . ., hereby, in accordance with section 321 of Part II of Title III of the Transportation Act of 1940, and the rules and regulations issued thereunder by the Secretary of the Interior, relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted or claimed should have been granted by any act of the Congress to the . . . Railroad (Railway) Company or to any predecessor in interest in aid of the construction of any portion of its railroad.
>
> "This release does not embrace the rights of way or station grounds of this company, lands sold by the company to innocent purchasers for value prior to September 18, 1940, lands embraced in selections made by the company and approved by the Secretary of the Interior prior to September 18, 1940, or lands which have been

patented or certified to the company or any predecessor in interest in aid of the construction of its railroad.

"(Followed by seal, signatures, execution and acknowledgment.)"

3. Contrary to the argument suggested in support of the Government's position as stated in the petition for certiorari, this Court has held in *Santa Fe Pacific R. Co.* v. *Work*, 267 U. S. 511, that the Act of 1874 and the granting Act of 1866 are not *in pari materia* to the extent that the provisions of the Act of 1866 must be read into the Act of 1874. In that case the railroad company attempted to select, under the Act of 1874, lands classified as coal lands notwithstanding a provision in the Act of 1874 that only "public lands not mineral" could be selected under that act—the argument for the railroad company being that the Act of 1874 was in legal effect amendatory of the granting act of 1866; that the latter granted and authorized indemnity selection of lands containing coal and iron by expressly providing that the word "mineral" as used in the granting act was not to be considered as including coal and iron; and that the word "mineral" as used in the Act of 1874 should be given the same construction. This court, however, held that the two acts were separate and distinct and that the construction argued for the Act of 1874 was not justified.

That the Act of 1904 likewise was new and independent legislation and in no sense amendatory of the Act of 1866 is apparent on its face. It plainly and in simple terms offered a trade, section for section, of public lands for lands owned by the railroad company. Compare *Santa Fe Pacific R. Co.* v. *Fall*, 259 U. S. 197, which like the present case (No. 1192) was a suit to enjoin the Secretary from rejecting and cancelling lieu selections under the Act of 1904 on the ground that his action was erroneous and arbitrary.

4. That in certain cases and within judicially defined limits an aggrieved party is entitled to a judicial review of the action of an administrative officer, such as the Secretary of the Interior, and that such review may be had by an ac-

tion for injunction or mandamus in the Courts of the District of Columbia is not a novel question. It has recently been given consideration in *Stark* v. *Wickard*, 321 U. S. 288. Compare *Hannegan* v. *Esquire*, No. 399, October Term 1945.

The historic use of the remedy of injunction or mandamus in cases involving the Secretary of the Interior and rights claimed under the public land laws, is illustrated by many cases. *Santa Fe Pacific R. Co.* v. *Lane*, 244 U. S. 492; *Payne* v. *Central Pacific R. Co.*, 255 U. S. 228; *Santa Fe Pacific R. Co.* v. *Fall*, 259 U. S. 197, *Ickes* v. *Fox*, 300 U. S. 82.

Santa Fe Pacific R. Co. v. *Fall*, 259 U. S. 197, for example, was a suit to enjoin the Secretary of the Interior from rejecting and cancelling selections *under the same act*, the Act of April 28, 1904, which is involved in one of the present cases, and the use of injunction as a remedy was recognized and approved.

5. The opinion of the United States Court of Appeals for the District of Columbia (R. 53-58) evidences a full understanding of the issues presented and the respective positions of the parties, and reaches a sound conclusion on the law. Further argument, therefore, seems unnecessary.

Respectfully submitted,

LAWRENCE CAKE,
Attorney for Respondent.